IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 3378 of 2007(B)

OS.542/2006 of PRL.SUB COURT, TRIVANDRUM

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PETITIONER:

K.S. RAJAGOPAL, AGED 48 YEARS,
S/O. KESAVANKUTTY, THIRUVATHIRA,
SREEKANTESWARAM, VANCHIYOOR P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.D.KISHORE

RESPONDENTS:

1. P.G. PRASANTH, AGED 31 YEARS,
S/O. PARAMESWARAN NAIR, T.C.74/28,
`ATHAM', PALKULANGARA, PETTAH P.O.

2. A. ANILKUMAR, AGED 38 YEARS,
S/O. K.APPUKUTTAN THAMPI,
CHARIVILA VEEDU, T.C.51/858,
KARAMANA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.N.NAGARESH
SRI.BINU PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 3378/07

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE JUDGMENT DT. 14.10.05 IN OS 530/04 OF I ADDL. MUNSIFF'S COURT, THIRUVANANTHAPURAM

EXT. P2 TRUE COPY OF THE PLAINT IN OS 542/06 OF SUB COURT, THIRUVANANTHAPURAM

EXT. P3 TRUE COPY OF THE AFFIDAVIT AND PETITION IN IA 5213/06 IN OS 542/06 OF SUB COURT, THIRUVANANTHAPURAM

EXT. P4 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO EXT. P3

EXT. P5 TRUE COPY OF THE ORDER DT. 2.12.06 IN IA 5213/06 IN OS 542/06

EXT. P6 TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER ON 2.1.07 BEFORE THE SUB COURT, THIRUVANANTHAPURAM IN OS 542/06

EXT. P7 TRUE COPY OF THE ORDER DT. 2.1.07 IN IA 5213/06 IN OS 542/06

REPONDENT'S EXTHIBITS:

EXT.R1A TRUE COPY OF THE ORDER DT. 2.11.06 IN IA 5213/06 IN OS 542/06 AS EXTRACTED FROM COURT PROCEEDINGS

EXT.R1B TRUE COPY OF THE AFFIDAVIT DT. 29.11.06 FILED BY THE SECOND RESPONDENT

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 3378 of 2007 B

JUDGMENT

Heard counsel on both sides.

2. The petitioner is the defendant in O.S.No. 542/06 on the file of the Principal Sub Court, Thiruvananthapuram. Respondents 1 and 2 instituted the said suit for recovery of an amount of Rs.3,40,000/-, which takes in an amount of Rs.2,50,000/-, which the petitioner admitted to have received from the respondents in the written statement filed in an earlier suit O.S.No.530/04 and interest thereon. Along with the institution of O.S.No.542/06, the respondents filed Exhibit P3 application for arrest of the petitioner before judgment. Thereupon, as is pointed out by the counsel for the respondents, Exhibit R1(a) order was passed directing notice to be issued to the petitioner to show cause as to why he should not furnish security for Rs.3,40,000/- within fifteen

days and in the meanwhile, to issue warrant of arrest against the petitioner.

2. The petitioner entered appearance and filed Exhibit P4 objection to Exhibit P3. The court below considered the objection and passed Exhibit P5 order,whereunder it concluded that the apprehension of the respondents that the petitioner would leave the jurisdiction of India, cannot be said to be not genuine, but instead of detaining the petitioner in civil prison, the court directed the petitioner to show cause as to why he should not furnish security for Rs.3,40,000/- within a period of thirty days and ordered that in case of failure, he shall be arrested and detained in civil prison for a period specified in Order XXXVIII Rule 1 CPC. That means, a second opportunity was also being afforded to the petitioner to furnish security. However, the petitioner filed Exhibit P6 affidavit again showing cause pursuant to Exhibit P5 order. It is further submitted that he has also surrendered his passport in the court below.

4. The court below, vide Exhibit P7 order, directed warrant to be issued for arrest of the petitioner, as he did not furnish security as per the directions in Exhibit P5 order. The grievance that is urged before me by the learned counsel for the petitioner is that the cause shown in Exhibit P6 was not considered and the court below, for the sole reason that security is not furnished, passed Exhibit P7 order, directing warrant being issued against the petitioner. It is worthy to note that vide Exhibit P5 order, the petitioner was not being asked to show cause, but was being directed to furnish security for Rs.3,40,000/- within a period of thirty days, ordering further that in case of failure, he will be arrested and detained in civil prison. Consequently, therefore, compliance with the directions in Exhibit P5 order can be had only in the event of the petitioner furnishing security for the amount specified. He having not done that, necessarily, the consequence is to follow that he has to be arrested and detained in civil prison.

The procedure followed by the court below in passing Exhibit P7 order is strictly in compliance with Order XXXVIII Rule 4 CPC.

This writ petition, in the circumstances, is devoid of merit and is dismissed. The petitioner is granted one week's time to furnish security in the court below in compliance with Exhibit P5 order, failing which, he shall be arrested and detained in civil prison, as directed in Exhibit P7 order. Issue copy of this judgment to the counsel for the petitioner on application as per Rules, as expeditiously as possible.

22nd March, 2007 (K.P.Balachandran, Judge)

tkv